

Agenda Item No. 4.1
For Agenda of 4/11/06



Tigard City Council Meeting Minutes

Date: February 28, 2006
Time: 6:30 p.m.
Place: Tigard City Hall, 13125 SW Hall Boulevard
Tigard, Oregon
Attending: Mayor Craig Dirksen Presiding
Councilor Sally Harding
Councilor Sydney Sherwood
Councilor Nick Wilson
Councilor Tom Woodruff

Agenda Item	Discussion & Comments	Action Items (follow up)
Study Session Intergovernmental Agreement (IGA) - Goal 5 Fish & Wildlife Habitat – Tualatin Basin Partners	<p>Staff Presenter: Associate Planner Igarta</p> <p>City Council will be asked to approve an IGA on the Consent Agenda relating to the organization and function of the Tualatin Basin Natural Resources Coordinating Committee (TBNRCC)</p> <p>Associate Planner Igarta reviewed the background leading up to the IGA as proposed. Approval of the IGA will extend the partnership with Tualatin Basin Partners for Natural Spaces to implement the fish and wildlife habitat protection program. Councilor Harding is the elected official liaison to the TBNRCC.</p> <p>Metro Council formally approved the Basin Program complying with Title 13 of the Regional Growth Management Functional Plan. Partners are now preparing to implement program elements to reach their goal of improving the Basin's environmental health and to comply with state and regional Goal 5 planning requirements.</p>	<p>See Consent Agenda No. 3.3, which was adopted by the City Council.</p>

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Hall Boulevard Jurisdictional Transfer Discussion	<p>Staff Presenter: City Engineer Duenas</p> <p>Information on this item is outlined in a February 22, 2006 memorandum from City Engineer Duenas, which is on file in the City Recorder's office.</p> <p>The Oregon Department of Transportation has asked local jurisdictions to consider the conditions under which they would accept responsibility for the street. City Engineer Duenas noted Hall Boulevard is designated as a "road of interest" to the County. Local jurisdictions will be meeting with the Oregon Department of Transportation again in March.</p> <p>Council members discussed the potential transfer and suggested ideas for improvements before accepting jurisdiction:</p> <ul style="list-style-type: none"> ♦ address bridge issues over Fanno Creek (near City Hall and also at Oak Street) ♦ clarify responsibility for the street between the City and the County ♦ request full three-lane improvements to preserve an opportunity to for funding 	<p>Consensus of City Council was that staff should continue discussions with ODOT about transferring a portion of Hall Boulevard to the City of Tigard.</p>
Hall Blvd./99W Design Modifications	<p>Staff Presenter: Senior Planner Nachbar</p> <p>Staff recommended that the Hall/99W intersection be considered as part of the contract work to be performed by OTAK for streetscape design work. The goal would be to make this intersection more pedestrian friendly and to establish the area as a gateway to the downtown (green theme). The City Center Advisory Commission endorsed staff's recommendation at its February 23, 2006, meeting.</p>	<p>Consensus of City Council was to support the proposed amendment to the agreement with OTAK to add Hall Blvd./ 99W to the list of projects in the streetscape design work.</p>

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Urban Services Intergovernmental Agreement (IGA) with cities of Tigard, Tualatin, Beaverton, and Wilsonville, and Washington County (Washington County – Wilsonville to Beaverton Commuter Rail Project)	<p>Staff Presenter: Senior Planner Nachbar</p> <p>This revision to the IGA is also on the Consent Agenda (Item No. 3.2). The revised IGA extends the term of the agreement from December 24, 2002 to December 31, 2008 and adds a section regarding the relocation of utilities. TriMet, while not signing the IGA, is referred to as project manager. Senior Planner Nachbar reported that Attorney Firestone reviewed the IGA and found it acceptable.</p>	
Executive Session	<p>The Tigard City Council went into Executive Session at 6:51 p.m. to discuss pending litigation under ORS 192.660(2)(h).</p> <p>Executive Session concluded at 7:08 p.m.</p>	
Study Session continued – Administrative Items	<ul style="list-style-type: none"> ▪ No Chamber of Commerce Representative will attend tonight's meeting; Executive Director Monlux asked to be scheduled for an April City Council agenda. ▪ Letter from Mr. Bob Storer was distributed (Agenda Item No. 6 – Ash Creek Estates Public Hearing) ▪ Distributed to the City Council samples of new forms: <ul style="list-style-type: none"> ♦ Redesign of Testimony Sign in Sheets for Citizen Communication and Public Hearing Testimony ♦ New form: "Are you interested in serving on a City of Tigard Board, Committee or Commission?" <p>The forms were prepared as a result of the City Council's February 21, 2006, discussion on improved communications.</p>	

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	<ul style="list-style-type: none"> ▪ The March 14, 2006, City Council meeting is cancelled. <p>Study Session concluded at 7:10 p.m.</p>	
Business Meeting	<p>1.1 Mayor Dirksen called the City Council and the Local Contract Review Board to Order at 7:31 p.m.</p> <p>1.2 Council Present: Mayor Dirksen, Councilors Harding, Sherwood, Wilson, and Woodruff.</p> <p>1.3 Pledge of Allegiance</p> <p>1.4 Council Communications & Liaison Reports</p> <ul style="list-style-type: none"> • Councilor Harding announced a tree-planting event on March 4, Englewood Park, 9 a.m. • Councilor Harding announced Tigard-area CPO's are sponsoring a forum regarding 99W on Saturday, March 4, 9 a.m.- noon, Deb Fennell Auditorium • Mayor Dirksen announced there would be no City Council meeting on March 14, 2006. <p>1.5 Call to Council and Staff for Non-Agenda Items: None</p>	
2. Citizen Communications	<ul style="list-style-type: none"> ▪ John Frewing, 7110 SW Lola Lane, Tigard, OR 97223 referred to a City Council discussion last week about a performance audit of the Police Department. He suggested the City Council consider revisiting the idea of consolidating the Tigard Police Department with Washington County law enforcement. Mr. Frewing said there was potential for significant cost savings. <p>Mayor Dirksen noted the City Council discussion last week was with the Financial Strategy Task Force. The Task Force reported that, after review, the City was providing the</p>	

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<p>Follow-Up – 5th Tuesday Meeting of January 31, 2006</p>	<p>services that it should be. The Task Force recommended performance audits of targeted programs in the General Fund to determine if services are being provided efficiently.</p> <ul style="list-style-type: none"> ▪ Linda Moholt, 19181 SW 55th Court, Tualatin, OR 97062, distributed information from the Tualatin Schoolhouse Pantry. She said the root cause of hunger stems from the need for affordable medical care as people must choose between paying for food or healthcare. She announced that in fall 2006, a free medical clinic will be available in the Washington County King City facility. The facility will be open one night a week staffed by volunteer doctors and nurses. Legacy and Providence are partners. A forum will be held April 25, 7 p.m. at Meridian Park Hospital. Essential Health Clinic information was also distributed. ▪ Pat Whiting, 8122 SW Spruce Street, Tigard, OR 97223, announced a forum will be held on March 4, 9 a.m. – 12 p.m. at the Deb Fennell Auditorium. She noted state, county, and local officials would be present to discuss issues regarding 99W. Questions from the public, written on cards, will be submitted to the panel of speakers for response. If people are not able to attend, Councilor Harding suggested they write to the Oregon Department of Transportation with their concerns. <p>City Manager Prosser reviewed issues that were discussed at the last City Council Fifth Tuesday Meeting:</p> <ul style="list-style-type: none"> ♦ Height restrictions issues – radio tower. This was addressed in a February 23, 2006, memorandum from the City Attorney. The neighbors are considering addressing their issue through their development's code, covenants, and restrictions (CC&R's). ♦ Investigate possibilities of a signal at Tigard and Main Street. This will be affected by the commuter rail crossing; it will be considered. 	

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	<ul style="list-style-type: none"> ◆ Park and Recreation Board meeting agendas and minutes have been posted on the City's web page. Staff will mail this information to anyone who requests it. ◆ Council could consider adding sidewalks to its next review of the street maintenance fee. The review is scheduled to take place in June 2007. ◆ Committee for Citizen Involvement will have recommendations regarding meetings held in neighborhoods to inform residents about new developments. Issues noted included that it seems as if there is a disconnect between the neighborhood meeting and what actually gets developed. ◆ The property owner responsible for clearing trees at Beef Bend/147th-150th (approximately) complied with Code provisions. ◆ Burnham Street design is to be done in May and construction completed in fall 2008. ◆ Use of franchise fees where collected is a City Council policy issue. ◆ Creating a task force to improve Durham Road right of way would be a Council decision. ◆ Notification to neighbors if there are substantial changes to a development should be incorporated in the Committee for Citizen Involvement recommendations. 	
3. Consent Agenda	<p>3.1 Approve Council Minutes for January 17 and 24, 2006</p> <p>3.2 Approve First Amendment to Urban Services Intergovernmental Agreement with Cities of Tigard, Tualatin, Beaverton, and Wilsonville, and Washington County (Washington County – Wilsonville to Beaverton Commuter Rail Project)</p> <p>3.3 Approve Intergovernmental Agreement (IGA) –</p>	<p>Motion by Councilor Sherwood, seconded by Councilor Woodruff, to approve the Consent Agenda.</p> <p>The motion was approved by a</p>

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	<p>Organization and Function of the Tualatin Basin Natural Resource Coordinating Committee</p>	<p>unanimous vote of Council present.</p> <p>Mayor Dirksen Yes Councilor Harding Yes Councilor Sherwood Yes Councilor Wilson Yes Councilor Woodruff Yes</p>
<p>4. Public Hearing (Quasi-Judicial): Vacation of An Un-Named Public Right-of-Way East of SW 74th Avenue and East of the S P & S Railroad Right-of-Way, North of Durham Road (VAC2005-00003)</p>	<p>The purpose of the public hearing is to consider a request by Larusso Concrete Company, Inc. and Richard Akerman & James Wathey concerning the proposed vacation involving an approximately 7,845 square foot portion of an un-named public right-of-way.</p> <p>The petition was filed with the City on November 15, 2005 and initiated by the City Council at the request of the applicant on December 20, 2005. Any interested person may appear and be heard for or against the proposed vacation of said Un-Named Portion of Public Right-of-way East of SW 74th Avenue Vacation. Any written objections or remonstrances were to have been filed with the City Recorder by 7:30 p.m. on February 28, 2006.</p> <p>Mayor Dirksen opened the public hearing.</p> <p>City Attorney Ramis reviewed the rules of procedure for this quasi-judicial hearing.</p> <p>Planning Manager Bewersdorff presented the staff report and noted the scope of the vacation request.</p> <p>The City did not pay for the right of way; the property was dedicated to the City when the property was platted. At that time, the subject property was considered to be needed for access; however, access is from SW 72nd Avenue.</p> <p>City Attorney Ramis noted the question before the City Council is whether it is in the public's interest to vacate the property.</p>	<p>Motion by Councilor Harding, seconded by Councilor Woodruff, to adopt Ordinance No. 06-01 with the amendment noted by staff in Section 2.</p> <p>The motion was approved by a unanimous vote of Council present.</p> <p>Mayor Dirksen Yes Councilor Harding Yes Councilor Sherwood Yes Councilor Wilson Yes Councilor Woodruff Yes</p>

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	<p>There were no declarations or challenges regarding ex parte contact, the Council's jurisdiction to hear this matter, or participation of any Council member.</p> <p>Public testimony:</p> <ul style="list-style-type: none"> ♦ Ed Murphy, 9875 SW Murdock Street, Tigard, OR 97224, advised he represented the applicants for this vacation. The applicants have applied for a zone change. Mr. Murphy described the development plans. ♦ Rich Ackerman and Jim Lang signed on the testimony sheets; however, they declined to testify. <p>Mayor Dirksen closed the public hearing.</p> <p>Planning Manager Bewersdorff advised staff recommended that the City Council approve the proposed ordinance with a change to Section 2 to add that the City Recorder would record a certified copy of the ordinance and using the usual effective date language for ordinances.</p> <p>City Council considered Ordinance No. 06-01.</p> <p>ORDINANCE NO. 06-01 – AN ORDINANCE VACATING AN APPROXIMATELY 7,845 SQUARE FOOT PORTION OF AN UN-NAMED PUBLIC RIGHT-OF-WAY WHICH LIES TO THE EAST OF SW 74TH AVENUE AND EAST OF THE S P & S RAILROAD RIGHT OF WAY, NORTH OF SW DURHAM ROAD, IN THE CITY OF TIGARD, WASHINGTON COUNTY, OREGON (VAC2005-00003)</p>	

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5. Public Hearing (Quasi-Judicial): Vacation of Five Small Portions of Public Right-of-Way Totaling 3,392 Square Feet Along SW 68 th Parkway and 69 th Avenue (VAC2005-00004 & VAC2005-00005)	<p>The purpose of the public hearing is to consider a request by Specht Development, Inc. concerning the proposed vacation involving five (5) small portions of public right-of-way totaling 3,392 square feet.</p> <p>The petition was filed with the City on September 9, 2005 and initiated by the City Council at the request of the applicant on January 10, 2006. Any interested person may appear and be heard for or against the proposed vacation of said 68th Parkway Public Right-of-Way Vacation and 69th Avenue Public Right-of-Way Vacation. Any written objections or remonstrances were to have been filed with the City Recorder by 7:30 p.m., February 28, 2006.</p> <p>Mayor Dirksen opened the public hearing.</p> <p>City Attorney Ramis noted the rules of procedure for this quasi-judicial hearing were the same as the rules for Agenda Item No. 4.</p> <p>Planning Manager Bewersdorff presented the staff report and noted the scope of the vacation request. Section 2 should be amended to reflect that the ordinance would take effect once the conditions are met and 30 days after its passage by the Council, using the usual effective date language for ordinances.</p> <p>There were no declarations or challenges regarding ex parte contact, the Council's jurisdiction to hear this matter, or participation of any Council member.</p> <p>There was no public testimony.</p> <p>Mayor Dirksen closed the public hearing.</p> <p>City Council considered Ordinance No. 06-02:</p> <p>ORDINANCE NO. 06-02 - AN ORDINANCE VACATING FIVE SMALL PORTIONS OF PUBLIC RIGHT OF WAY, TOTALING 3.392 SQUARE FEET ALONG 68TH PARKWAY AND 69TH AVENUE IN THE CITY OF TIGARD, WASHINGTON COUNTY, OREGON (VAC2005-00004 & VAC2005-00005).</p>	<p>Motion by Councilor Wilson, seconded by Councilor Sherwood, to adopt Ordinance No. 06-02 with amendment to Section 2 as noted by the staff.</p> <p>The motion was approved by a unanimous vote of Council present.</p> <table><tr><td>Mayor Dirksen</td><td>Yes</td></tr><tr><td>Councilor Harding</td><td>Yes</td></tr><tr><td>Councilor Sherwood</td><td>Yes</td></tr><tr><td>Councilor Wilson</td><td>Yes</td></tr><tr><td>Councilor Woodruff</td><td>Yes</td></tr></table>	Mayor Dirksen	Yes	Councilor Harding	Yes	Councilor Sherwood	Yes	Councilor Wilson	Yes	Councilor Woodruff	Yes
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6. Public Hearing (Quasi-Judicial) Land Use Board of Appeals (LUBA) Remand of Ash Creek Estates Subdivision (Sub) 2003-00010/Planned Development Review (PDR) 2003-00004/Zone Change (ZON) 2003-0003/Sensitive Lands Review (SLR) 2003-00005/Adjustment (VAR) 2003-00036/Adjustment (VAR) 2003-00037	<p>The State Land Use Board of Appeals (LUBA) has remanded for a second time the City Council's approval of a 29-lot Planned Development Subdivision on 9.3 acres and associated Zone Change, Sensitive Lands, and Adjustment reviews to address a single issue relating to tree preservation. As limited by LUBA, the issue remanded is whether the tree plan preserves trees to the greatest extent possible, given that the second tree plan does not protect 23 trees designated for protection in the original tree plan, but not designated for protection in the revised tree plan previously approved. On this second remand, the applicant has submitted a second revised tree plan that amends the first revised tree plan by designating for protection the 23 trees specifically mentioned by LUBA. A full copy of LUBA's Final Opinion and Order can be obtained from City Hall at cost, or is also available online at http://luba.state.or.us/pdf/2005/sept05/05042.htm. LOCATION: 9750 SW 74th Avenue; WCTM 1S125DC, Tax Lots 300 and 400. ZONE: R-4.5: Low-Density Residential District. The R-4.5 zoning district is designed to accommodate detached single-family homes with or without accessory residential units at a minimum lot size of 7,500 square feet. Duplexes and attached single-family units are permitted conditionally. Some civic and institutional uses are also permitted conditionally. APPLICABLE REVIEW CRITERIA: The only applicable criterion on the issue on which LUBA remanded is CDC 18.350.100.B.3.a.1, which requires that planned developments protect existing trees to the greatest degree possible.</p> <p>City Attorney Ramis reviewed a statement of the quasi-judicial land use hearing procedures. A copy of the text of the procedures is on file in the City Recorder's office. His remarks included the following:</p> <p>“Any person may offer testimony. This matter is on remand from the Land Use Board of Appeals on a single narrow issue and testimony will be limited to that issue. LUBA limited the scope of this hearing to the question of whether CDC 18.350.100B.3.a.1 relating to tree protection is met with respect to 23 trees specified in the LUBA decision.”</p> <p>Mayor Dirksen opened the public hearing.</p> <p>Planning Manager Bewersdorff reviewed the history of this matter as outlined in the Agenda</p>	<p>Motion by Councilor Sherwood, seconded by Councilor Wilson, to approve Resolution No. 06-09, which is a tentative decision until staff returns to City Council with additional findings.</p> <p>The motion was approved by a majority vote of Council present.</p> <table><tr><td>Mayor Dirksen</td><td>Yes</td></tr><tr><td>Councilor Harding</td><td>No</td></tr><tr><td>Councilor Sherwood</td><td>Yes</td></tr><tr><td>Councilor Wilson</td><td>Yes</td></tr><tr><td>Councilor Woodruff</td><td>Yes</td></tr></table> <p>This matter will be before the Council again on March 28, 2006, for final action.</p>	Mayor Dirksen	Yes	Councilor Harding	No	Councilor Sherwood	Yes	Councilor Wilson	Yes	Councilor Woodruff	Yes
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	<p>Item Summary. He noted the proposed resolution contains an additional finding and an additional condition, No. 59. Planning Manager Bewersdorff referred to the memorandum before the City Council from the City Attorney's office that also outlines the case before the City Council.</p> <p>City Attorney Ramis clarified that this case has been to LUBA more than once. Current status is that the City's decision had been upheld in all respects except for one point for further explanation and treatment by the Council. LUBA identified in Footnote 16 of this case 23 trees and asked that the Council consider how those trees are being treated in the protection plan. LUBA said that the treatment of these trees needed to be explained under the City standard, which says, "Preserve to the greatest extent possible the trees on the site." Before the City Council is a letter from the applicant noting that each of the 23 trees identified by LUBA can and will be preserved in the final development plan.</p> <p>City Attorney Ramis advised that a letter had been submitted to the City Council from Bob Storer. This letter will be included in the Record; however, City Attorney Ramis advised the City Council should consider the testimony carefully and not go beyond the scope of the LUBA remand. He advised that he did not believe any of the points stated in Mr. Storer's letter address the issue that LUBA has remanded. The letter asks the City Council to broaden the scope of the hearing beyond LUBA's specified scope, but this would violate LUBA's decision. City Attorney Ramis said his advice would be to not broaden the scope of the hearing. Mr. Storer's letter also argues about preserving trees, other than the 23 trees that are at issue and, again, this would be beyond the scope of the hearing. Mr. Storer's letter urges the City Council to deny the application even if the application meets the Code criteria; however, the City Council would not have such authority to do so in this proceeding. If the City Council wants to change the rules, it must be done within a process other than a quasi-judicial hearing. Mr. Storer's letter argues for the use of conservation easements, which are not at issue. The letter argues for compliance with laws of other jurisdictions which, again, is not before the City Council. Mr. Storer argues for the City to purchase the property and that issue is also not before the City Council.</p> <p>Declarations and Challenges: Councilor Harding advised she attempted to visit the site; however, the property is posted as "private property." Mayor</p>	

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	<p>Dirksen advised that he was well aware of the location of this site.</p> <p>John Frewing, 7110 SW Lola Lane, Tigard, OR 97223, challenged and requested clarification with regard to the adequacy of disclosure of ex parte contact between the decision makers and the applicant. A description of Mr. Frewing's objections is in writing and on file in the City Recorder's office. As outlined by Mr. Frewing, the alleged ex parte contact was evidenced in a newspaper column written by Rick Bella in the February 16, 2006, <i>The Oregonian</i>. This article quoted Mayor Dirksen commenting on donation of property to the City by the developers for Ash Creek Estates Subdivision.</p> <p>City Attorney Ramis advised that, under the proceedings used by the City of Tigard, now is the time to conduct the proceeding to determine whether there is bias or ex parte communications. City Attorney Ramis recommended against the continuance requested by Mr. Frewing unless it turns out during the process of examining that question, there is a need to do that. Before proceeding with City Council comments, City Attorney Ramis recommended the other parties to the case have an opportunity to comment on this request.</p> <p>Chris Koback, representing the applicant, and Dale Richards of Winwood Construction advised that they had no communications with the Tigard City Council members outside the hearing process.</p> <p>City Attorney Ramis asked the City Council members if there had been any discussion with the applicant or with the applicant's representative about the subjects Mr. Frewing has raised and also whether there might be some open space, as part of this application, which would bias City Council and prevent them from making a fair decision based upon the criteria and facts presented.</p> <p>Councilor Wilson advised that he has not talked to the owner or the developer other than within the public meetings. In addition, he noted that acquisition of the property by the City would not bias his decision. He might, since the accusation has been raised, want to decline to accept donated property to make sure there is no hint of impropriety or quid pro quo.</p> <p>Councilor Sherwood advised she has not spoken to the applicant or applicant representatives other than in the meetings; nor has she spoken to the</p>	

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	<p>press. She agreed with Councilor Wilson's statement if it was thought she would be biased if the property was accepted, then she would support turning it down.</p> <p>Council Woodruff said this process began before his term on City Council started. He said he has had no contact with any of the people involved. He advised he had no conflict.</p> <p>Councilor Harding advised that the process began before her term on Council began. She has had no contact with the developer, the attorney, or Mr. Frewing.</p> <p>City Attorney Ramis asked to clarify – Councilor Woodruff had indicated he had had no ex parte communications and asked if there was anything about the case that would bias him in one way or another. Councilor Woodruff said, "No."</p> <p>Mayor Dirksen noted that he was interviewed by <i>Oregonian</i> Columnist Bella and he did make a statement with regard to potential for a portion of this parcel, which he understood the acreage that might be donated to the City was not developable. The Mayor's comment in Mr. Bella's article was based on a discussion with Interim Community Development Director Coffee. In addition, he noted that the article might be incorrect insofar as he is not certain that a donation has taken place. Mayor Dirksen advised that the only discussion he has had regarding this matter has been with City of Tigard staff. He has not met or talked with anyone outside of the public hearing. He noted that he had, in fact, on previous occasions approved this Planned Development before there was any thought that land might be donated.</p> <p>City Attorney Ramis advised he had not heard anything that would indicate either there has been ex parte communication or that any Council member has found a reason that they could not, because of bias, hear the case. He recommended the City Council proceed with the hearing; any decision reached tonight be a tentative decision so that the City Attorney can come back with findings for the City Council to consider that would address the ex parte communication and bias issues as well as the substantive decision that the City Council renders.</p> <p>City Manager Prosser noted the City has not taken title to any land. He noted the possible land donation would be something to explore; this matter has been referred to the Parks and</p>	

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	<p>Recreation Advisory Board, which has been working on criteria for when and how the City might accept donated land. No action has been taken on this piece of property in any way whatsoever.</p> <p>Mayor Dirksen also noted, with reference to the 23 trees under review at this hearing, he has no idea whether the trees are located in property that might be donated to the City; therefore, he did not see how this would have any impact on tonight's decision.</p> <p>City Attorney Ramis affirmed, upon a question from Councilor Woodruff, that the only issue before the City Council at this time is regarding the 23 trees per the LUBA remand; there is no choice before the City Council regarding whether or not the City should allow the project to move forward.</p> <p>Applicant's Statement:</p> <p>Chris Koback, representing the applicant, noted that subsequent to the LUBA remand the applicant was to either justify removing the 23 trees or show a plan saving the 23 trees. They chose to save the 23 trees.</p> <p>Councilor Wilson asked whether an arborist was involved in the decision whether the trees could be saved or not? Mr. Koback said there was an arborist that prepared the report. An arborist was not involved in the decision to save the trees. It was not a question of whether the trees were dead or diseased; these trees were under 12-inches in diameter and were going to be removed because, the Code as they interpreted, allowed them to remove trees less than 12 inches. LUBA directed them to look at this again, they did and the trees will be saved.</p> <p>Public Testimony:</p> <p>Mayor Dirksen called upon Mr. Frewing to speak as an opponent and reminded Mr. Frewing that the only issue before the City Council was with regard to the 23 trees.</p> <p>John Frewing, 7110 SW Lola Lane, Tigard, Oregon, commented that he believed the laws required him to register his objection on the adequacy of the ex parte disclosure. He said he does register an objection to keep his opportunity alive for an appeal.</p> <p>Mr. Frewing said his second objection was</p>	

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	<p>regarding the scope of the hearing. He noted the City Attorney has advised the City Council cannot consider anything other than the 23 trees without violating the LUBA order. Mr. Frewing said his understanding was that the City Council could, of its own will, change the scope of the hearing.</p> <p>Mr. Frewing reviewed his testimony regarding the 23 trees. He also submitted a document for the record, which outlined his testimony. He referred to the revised tree preservation location drawing dated September 22, 2005, and said the application materials fall short of compliance to preserve the 23 trees.</p> <p>He referred to a drawing an how the trees were marked and then returned to his prepared comments whereby he outlined how the application materials fall short of compliance.</p> <p>After reviewing comments relating to the 23 trees, Mr. Frewing then referred to his written comments and outlined his issues with regard to the decision process. City Attorney Ramis requested that Mr. Frewing keep his testimony tied to the issue of the 23 trees. Mr. Frewing explained his comments were in two parts: 1) 23 trees and the 2) the hearing process and his rights within the hearing process. City Attorney Ramis said Mr. Frewing could continued but noted much of the testimony presented by Mr. Frewing appeared to be repetitive of issues already ruled upon by LUBA; therefore, these issues would not be before the City Council. Mr. Frewing said he did not think the issues had been addressed by LUBA.</p> <p>Mr. Frewing's written testimony was incorporated into the meeting record.</p> <p>Mr. Frewing requested that staff be asked to prepare findings to deny the application.</p> <p>In response to a question from Mayor Dirksen, Mr. Frewing advised he was in favor of the 23 trees being preserved but noted there were inconsistencies with the drawing regarding which trees are to be saved.</p> <p>Meeting recessed at 9:03 p.m. Meeting reconvened at 9:10 p.m.</p> <p>Rebuttal:</p> <p>Mr. Koback responded to Mr. Frewing's testimony and advised that the large tree plan was not revised. The applicant submitted a new drawing that they</p>	

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	<p>thought was consistent with LUBA's dictate that showed that the 23 trees would be preserved. The Condition, as drafted by staff and agreed to by the applicant, specifically references that plan. Therefore, he does not think there is any confusion about how and what will happen. The applicant will guarantee the 23 trees will be preserved. The trees are not identified by species as noted by Mr. Frewing; this issue was raised at the Court of Appeals and the Court rejected the argument presented by Mr. Frewing on this issue.</p> <p>Mr. Koback said the argument referenced by Mr. Frewing dealing with tree protection; however, LUBA's dictate was very specific – it was on preserving trees to the extent possible. It did not talk about protection. Mr. Koback said evidence is in the record with regard to how the trees will be protected during construction. This was an issue that Mr. Frewing raised at LUBA and LUBA agreed with the applicant that what the applicant has submitted is adequate.</p> <p>Mr. Koback advised that new plans and standards raised by Mr. Frewing are not applicable as the applicant is entitled to comply with the laws in place at the time the application for this development was filed.</p> <p>Mr. Koback said the plan now before the City Council was not prepared by an arborist; "x's" were taken off the 23 trees to show that they would be protected from removal.</p> <p>The fencepost argument raised by Mr. Frewing relates to tree protection, which is a separate issue and is not part of the LUBA remand.</p> <p>There was discussion on the 23 trees and the requirements by LUBA; these trees are marked and are a net increase in the amount of trees that will be saved. There is no requirement for a formal tree plan. Mr. Koback said his client has clearly identified the trees to be saved. Mr. Richards said he personally marked the trees to be saved.</p> <p>There was discussion about the penalty that could be applied during the construction phase if a tree is not saved, including a \$500 fine plus the value of the tree and payment for mitigation requirements.</p> <p>Mr. Koback, in response to a question from Councilor Woodruff, said that nothing in the plan has been changed from the application. An arborist report was required; Terry Flanagan was the arborist.</p>	

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	<p>In response to a question by Mayor Dirksen, Planning Manager Bewersdorff advised that to his knowledge the application has not been changed from the original application other than to protect an additional 23 trees.</p> <p>City Attorney Ramis noted the March 14 City Council meeting has been cancelled. He asked the applicant if they had any objection to the final order being considered by the City Council at its March 28, 2006, meeting. The applicant did not object.</p> <p>In response to a question from Councilor Wilson and Councilor Harding regarding whether the staff was concerned about whether it was clear as to which 23 trees were to be saved, Planning Manager Bewersdorff advised the trees were marked on the plan and the trees were numbered; it was clear.</p> <p>Mr. Koback said that the previous report has not been changed. There is the new plan showing the 23 trees that are to be saved, but the large document originally submitted was not changed.</p> <p>Councilor Woodruff asked the City Attorney about the LUBA decision. City Attorney Ramis read the language from the LUBA decision:</p> <p style="padding-left: 40px;">“We also caution that our remand does not obligate the City to provide petitioner with another opportunity to identify additional trees that might be preserved. The City’s obligation on remand is limited to the trees identified in note 16 of this opinion.”</p> <p>Mayor Dirksen and Councilor Sherwood advised they had no desire to open the hearing to consider additional issues.</p> <p>Councilor Harding noted she would like to reopen for further review if there was any evidence that the K value had been increased (steepness of slope) and referred to the interpretation that can be made by the City Engineer. She said that she did not want to see the citizens and the City have to pay for repairs in the future due to things that may not hold over time. When she did the site visit she could not physically go on the property. She referred to the actual severity of the steepness of the slope.</p> <p>Mr. Frewing advised that new information was being discussed and he asked for an opportunity for rebuttal. City Attorney Ramis advised City</p>	

Agenda Item	Discussion & Comments	Action Items (follow up)
	<p>Council to allow opportunity for additional comment and then allow the applicant to rebut.</p> <p>Mr. Frewing said that Mr. Richards advised the trees to be saved have been marked with numbers, but Mr. Frewing cannot go on the site. From what he has been able to observe, the tree markers and the tree numbering does not correspond to the drawing.</p> <p>There was no rebuttal.</p> <p>City Attorney Ramis noted the trees were identified in footnote 16 of the LUBA decision. The only comments germane to this hearing were that these trees are to be saved. Enforcement and saving of the trees comes later.</p> <p>Mayor Dirksen closed the public hearing.</p> <p>The City Attorney recommended that the City Council make a decision as framed by LUBA, which is to either explain why the trees can be removed or rule that the trees must be preserved. It seems to be that the applicant is proposing to preserve the trees.</p> <p>City Council considered and adopted Resolution No. 06-09, which will be a tentative decision until staff returns with findings for Council consideration.:</p> <p>RESOLUTION NO. 06-09 – A RESOLUTION AND FINAL ORDER APPROVING THE ASH CREEK ESTATES SUBDIVISION (SUBDIVISION (SUB) 2003-00010/PLANNED DEVELOPMENT REVIEW (PDR) 2003-00004/ZONE CHANGE (ZON) 2003-00003/SENSITIVE LANDS REVIEW (SLR) 2003-00005/ ADJUSTMENT (VAR) 2003-00036/ ADJUSTMENT (VAR) 2003-00037/ - ON REMAND FROM LUBA; AND ADOPTING FINDINGS AND IMPOSING CONDITIONS.</p>	
	<p>(City Recorder's note: Agenda Items were considered out of the order listed on the Agenda. The next item heard was Agenda Item No. 10.)</p>	

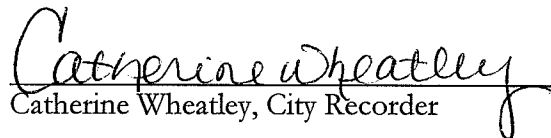
Agenda Item	Discussion & Comments	Action Items (follow up)										
10. Consider Establishing a Proposed Local Improvement District (LID) as a Project in the FY 2005-06 Capital Improvement Program (CIP), and Directing the Preparation of a Preliminary Engineer's Report for the Proposed LID in the Tigard Triangle and Authorizing the Establishment of a Funding Mechanism for the Preparation of the Report	<p>Staff Presenter: City Engineer Duenas</p> <p>The PowerPoint presentation overview is on file in the City Recorder's office.</p> <p>There was discussion on the process for this LID. Property owners within the area will be notified of this potential Local Improvement District. A favorable decision tonight to proceed will begin the study process. At a later meeting, the City Council will consider a recommendation whether to proceed or terminate the proceedings. There will be an opportunity for public comment on whether to form this LID. Specht Development is funding the cost for the study regarding formation of the LID. If the LID moves forward, then the study expenses will be included in the final costs for the LID.</p> <p>Greg Specht, President of Specht Development, identified the properties owned by Specht and reviewed the requirements associated with "floor area ratios" (FAR). He described the type of development Specht decided it would like to place on the property, which requires a larger parcel of property to meet Code requirements. In addition, Ed Murphy (also representing Specht Development) referred to the LID procedures and that the City's preference is that an LID is not a single-owner LID. Approximately 60 percent of the property is owned by Specht Development.</p> <p>Mr. Specht noted that about 21 percent of the properties are owner occupied; these owners would be the most impacted with the formation of the LID. He pointed out that this property is within the MUE (Mixed Used Employment) and planned for future employment opportunities and transportation connectivity.</p> <p>Council and staff discussed that this was a preliminary step; more evaluation would take place later, including input from other property owners.</p>	<p>Motion by Councilor Woodruff, seconded by Councilor Sherwood, to adopt Resolution No. 06-10.</p> <p>The motion was approved by a unanimous vote of Council present.</p> <table><tr><td>Mayor Dirksen</td><td>Yes</td></tr><tr><td>Councilor Harding</td><td>Yes</td></tr><tr><td>Councilor Sherwood</td><td>Yes</td></tr><tr><td>Councilor Wilson</td><td>Yes</td></tr><tr><td>Councilor Woodruff</td><td>Yes</td></tr></table>	Mayor Dirksen	Yes	Councilor Harding	Yes	Councilor Sherwood	Yes	Councilor Wilson	Yes	Councilor Woodruff	Yes
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Councilor Woodruff	Yes											

Agenda Item	Discussion & Comments	Action Items (follow up)										
	<p>Councilor Wilson noted ex parte contact in that he did speak with Mr. Specht previously about the FAR requirements. He advised that they did not talk about the formation of an LID. Councilor Wilson advised this conversation would not influence his decision in this matter.</p> <p>City Council considered Resolution No. 06-10</p> <p>RESOLUTION NO. 06-10 – A RESOLUTION DIRECTING THE ENGINEERING STAFF TO ESTABLISH A PROPOSED LOCAL IMPROVEMENT DISTRICT (LID) AS A PROJECT IN THE FY 2006-06 CIP (CAPITAL IMPROVEMENT PROGRAM), DIRECTING THE PREPARATION OF A PRELIMINARY ENGINEER’S REPORT FOR THE PROPOSED LID IN THE TIGARD TRIANGLE AND AUTHORIZING THE ESTABLISHMENT OF A FUNDING MECHANISM FOR THE PREPARATION OF THE REPORT</p>											
11. Consider Budget Amendment #10 to the FY 2005-06 Budget to Increase Appropriations in the Gas Tax Fund for Funding of the Preliminary Engineer’s Report for the Proposed Local Improvement District (LID) for Infrastructure Improvements in the Tigard Triangle	<p>The proposed budget amendment is related to Agenda Item No. 10. Specht development is depositing \$125,000 to fund the Preliminary Engineer’s Report. While the total Preliminary Engineer’s Report cost is \$125,000, it is anticipated that only \$70,000 of this total cost will be incurred in FY 2005-06.</p> <p>City Manager Prosser noted that Specht Development’s deposit will be placed in the Gas Tax fund and will actually fund the cost of the report. For budgetary purposes, it is necessary to do a contingency transfer of \$70,000 from the Gas Tax Fund to the Gas Tax Capital Improvement Project budget to appropriate the necessary funds. The City will include the cost of preparing the report in the total cost of the LID if the City establishes the district. If the LID is not formed, Specht Development’s deposit will be used to fund the report’s cost.</p> <p>City Council considered Resolution No. 06-11.</p>	<p>Motion by Councilor Sherwood, seconded by Councilor Wilson, to adopt Resolution No. 06-11.</p> <p>The motion was approved by a unanimous vote of Council present.</p> <table><tr><td>Mayor Dirksen</td><td>Yes</td></tr><tr><td>Councilor Harding</td><td>Yes</td></tr><tr><td>Councilor Sherwood</td><td>Yes</td></tr><tr><td>Councilor Wilson</td><td>Yes</td></tr><tr><td>Councilor Woodruff</td><td>Yes</td></tr></table>	Mayor Dirksen	Yes	Councilor Harding	Yes	Councilor Sherwood	Yes	Councilor Wilson	Yes	Councilor Woodruff	Yes
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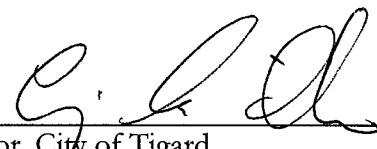
Agenda Item	Discussion & Comments	Action Items (follow up)
	<p>RESOLUTION NO. 06-11 – A RESOLUTION APPROVING BUDGET AMENDMENT #10 TO THE FY 2005-06 ADOPTED BUDGET TO INCREASE APPROPRIATIONS IN THE GAS TAX FUND FOR FUNDING OF THE PRELIMINARY ENGINEER’S REPORT FOR THE PROPOSED LOCAL IMPROVEMENT DISTRICT (LID) FOR INFRASTRUCTURE IMPROVEMENTS IN THE TIGARD TRIANGLE</p>	
<p>7. Local Contract Review Board – Post-Project Evaluation Report of the CM/GC (Construction Manager/General Contractor) Contract for the Tigard New Library Project</p>	<p>Staff Presenter: City Engineer Duenas</p> <p>The PowerPoint presentation overview is on file in the City Recorder’s office.</p> <p>The post-project evaluation report should have been submitted to the Local Contract Review Board within 30 days of acceptance and final payment of the project and that it be made available to the public. The evaluation is intended to comply with the above requirement although the required submittal period has expired.</p> <p>The use of the CM/GC method ensured control of costs through the design and construction phases. Because of the collaborative nature of the process, the new library was constructed on time and within the budget set for the project.</p> <p>City Manager Prosser advised that this method of construction was used for the first time by the City of Tigard for the new library building. It would clearly be of benefit to use this process again. LCRB Chair Dirksen acknowledged the success of the project.</p>	
<p>8. Consider an Intergovernmental Agreement (IGA) for Joint Funding of a Water Supply System Plan with the City of Lake Oswego</p>	<p>Staff presenter: Public Works Director Koellermeier</p> <p>Approval of the IGA would fund a water supply system plan with the City of Lake Oswego. The City of Tigard has been a Lake Oswego water customer since the early 1960’s. The IGA would set the groundwork for a future joint ownership of a water system with Lake Oswego. On February 8, the</p>	<p>Motion by Councilor Sherwood, seconded by Councilor Harding, to approve the Intergovernmental Agreement.</p> <p>The motion was</p>

Agenda Item	Discussion & Comments	Action Items (follow up)
	<p>Intergovernmental Water Board recommended approval of the IGA.</p> <p>City Manager Prosser noted the City of Lake Oswego's water source is the Clackamas River.</p> <p>Councilor Woodruff advised that the City is looking at a number of options for long-term water sources and he was very much in favor of moving ahead with the IGA.</p> <p>There was discussion on the cost for the work to be done as outlined in the IGA, with Councilor Harding expressing her hope that it could be less expensive. Public Works Director Koellermeier reviewed that the high cost was driven by the level of engineering detail required. Councilor Woodruff acknowledged the high expense noting that this is a long-term investment for multiple millions of dollars; the City is coming to the time where it will have to make long-term decisions.</p>	<p>approved by a unanimous vote of Council present.</p> <p>Mayor Dirksen Yes Councilor Harding Yes Councilor Sherwood Yes Councilor Wilson Yes Councilor Woodruff Yes</p>
<p>9. Consider Pursuing Design Modification of the Intersection at Hall Boulevard and 99W to Include Pedestrian Improvements, Landscaping Enhancements and a Potential Gateway</p>	<p>Staff Presenter: Interim Community Development Director Coffee</p> <p>The design modification for this project would be to include pedestrian improvements, landscaping enhancements, and a potential gateway. The amendment to the streetscape contract with OTAK for \$7-10,000 would provide design and engineering services for intersection modifications. Washington County is presently managing the design of improvements to the intersection. There is an opportunity now as part of the design process for the City to potentially include these additional design modifications.</p>	<p>Council consensus was to direct staff to pursue the design modifications as outlined in the Agenda Item Summary.</p>

Adjournment	Council meeting adjourned: 10:21 p.m.	<p>Motion by Councilor Harding, seconded by Councilor Woodruff, to adjourn the meeting.</p> <p>The motion was approved by a unanimous vote of Council present.</p> <p> Mayor Dirksen Yes Councilor Harding Yes Councilor Sherwood Yes Councilor Wilson Yes Councilor Woodruff Yes </p>
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Catherine Wheatley, City Recorder

Attest:



Mayor, City of Tigard

Date: April 11, 2006